

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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INNOVATION VENTURES, LLC, ET AL.,	:	
	:	12 Civ. 5354 (KAM) (RLM)
Plaintiffs,	:	
	:	
-against-	:	<u>STIPULATION AND ORDER</u>
	:	
ULTIMATE ONE DISTRIBUTING CORP., ET	:	
AL.	:	
	:	
Defendants.	:	
_____	X	

UPON THE STIPULATION AND AGREEMENT by and between the undersigned counsel for Plaintiffs Innovation Ventures, LLC; Living Essentials, LLC; International IP Holdings, LLC (together, “Plaintiffs”), and counsel for defendants Flexopack, Leslie Roman and Donna Roman (collectively, the “Flexopack Defendants”), it hereby is ORDERED as follows:

1. The Flexopack Defendants acknowledge having been served with the following documents: Summons and Seventh Amended Complaint; and Order to Show Cause for a Temporary Restraining Order and Preliminary Injunction (“Order to Show Cause”), including the supporting Declarations and Memorandum of Law.

2. For purposes of this stipulation, the “5 HOUR ENERGY Marks” are:

- “5 HOUR ENERGY” (Registration No. 3,003,077);
- “5-HOUR ENERGY” (Registration No. 4,004,225);

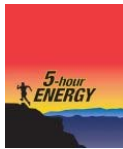
-  (Registration No. 4,104,670);



- which includes the wording “5-hour ENERGY” in black outlined in yellow, below which are the words “EXTRA STRENGTH” in yellow, along with a person in black silhouette, outlined in yellow, shown in an athletic pose adjacent to an uneven landscape, with the sky depicted in transitioning colors from black to red as the sky meets the landscape (Registration No. 4,116,951);



- , commonly referred to as “Running Man,” (Registration No. 3,698,044); and



- which includes the wording “5-hour ENERGY” in black outlined in yellow, along with a person in black silhouette, outlined in yellow, shown in an athletic pose adjacent to an uneven landscape, with the sky depicted in transitioning colors from red to yellow as the sky meets the landscape (Registration No. 4,120,360).

3. The Flexopack Defendants and their agents, servants, employees, and all other persons in active concert and participation with them, pending the final hearing and determination of this action are preliminarily enjoined from:

- (a) using any of the 5 HOUR ENERGY Marks (or any marks confusingly similar thereto) on any counterfeit product in connection with the manufacture, sale, offer for sale, distribution, advertisement, or any other use of dietary supplements;
- (b) using any logo, trade name or trademark confusingly similar to any of the 5 HOUR ENERGY Marks which may be calculated to falsely represent or which has the

effect of falsely representing that the services or products of the Flexopack Defendants or of others are sponsored by, authorized by, or in any way associated with Plaintiffs;

(c) infringing any of the 5 HOUR ENERGY Marks;

(d) otherwise unfairly competing with Plaintiffs in the manufacture, sale, offering for sale, distribution, advertisement, or any other use of dietary supplements;

(e) falsely representing themselves as being connected with Plaintiffs or sponsored by or associated with Plaintiffs or engaging in any act which is likely to cause the trade, retailers and/or members of the purchasing public to believe that they or the other defendants are associated with Plaintiffs;

(f) using any reproduction, counterfeit, copy, or colorable imitation of any of the 5 HOUR ENERGY Marks in connection with the publicity, promotion, sale, or advertising of dietary supplements;

(g) affixing, applying, annexing or using in connection with the sale of any goods, a false description or representation including words or other symbols tending to falsely describe or represent such goods as being 5-hour ENERGY® and from offering such goods in commerce;

(h) diluting any of the 5 HOUR ENERGY Marks;

(i) buying, selling, transferring (other than to Plaintiffs or law enforcement officials), altering, or destroying any counterfeit products with the 5 HOUR ENERGY Marks;

(j) destroying any records documenting the manufacture, sale, offer for sale, distribution, advertisement or receipt of any product purporting to be 5 HOUR ENERGY®; and

(k) assisting, aiding or abetting any other person or entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (j) above.

4. Plaintiffs and the Flexopack Defendants stipulate that, as among them, there are no issues to address at the hearing scheduled for January 29, 2013, with respect to the Order to Show Cause. The Flexopack Defendants waive any and all rights they might have to a hearing challenging the issuance of a preliminary injunction.

5. Plaintiffs and their surety U.S. Specialty Insurance Company are released from any and all liability under Bond Numbers 1000772127 and 1000772132 as they relate to the Temporary Restraining Orders dated November 30, 2012 and December 28, 2012.

6. For purposes of this stipulation, the “Bank Accounts” are bank accounts currently frozen pursuant to the Court’s December 28, 2012 Order (Docket No. 290) with Bank of America ending in: 9271, 1649, 7259, 4483, 4488, 4529, 6032, 9271, and 6644.

7. The Flexopack Defendants and Plaintiffs have agreed that, in exchange for Plaintiffs’ agreement to release the Bank Accounts, the Flexopack Defendants will transfer all assets from the Bank Accounts into the attorney trust account of their undersigned counsel, the Law Offices of Barry K. Rothman (the “Attorney Escrow Account”) pending either final resolution of this action or written agreement between Plaintiffs and the Flexopack Defendants. After this Stipulation has been So Ordered, counsel for Plaintiffs and counsel for the Flexopack Defendants shall jointly instruct Bank of America to wire all assets from the Bank Accounts into the aforementioned Attorney Escrow Account. Upon receiving written confirmation from counsel for the Flexopack Defendants of the transfer of all assets from the Bank Accounts into the Attorney Escrow Account, counsel for Plaintiffs will inform Bank of America that Plaintiffs have no objection to the lifting of any continuing freeze or restraint on these Bank Accounts.

8. This agreement may be executed in counterparts. Signatures transmitted electronically or by facsimile shall be deemed original.

Dated: January 15, 2013

CONSENTED AND AGREED TO BY:

<p>PATTERSON BELKNAP WEBB & TYLER LLP</p> <p>By: <u>/s/ Michelle Cohen</u> Geoffrey Potter gpotter@pbwt.com Christos Yatrakis cyatrakis@pbwt.com Michelle Waller Cohen mcohen@pbwt.com Jeremy A. Weinberg jweinberg@pbwt.com 1133 Avenue of the Americas New York, New York 10036 (212) 336-2000 Attorneys for Plaintiffs</p>	<p>LAW OFFICES OF BARRY K. ROTHMAN</p> <p>By: <u>/s/ Gordon J. Zuiderweg</u> Barry K. Rothman Gordon J. Zuiderweg bkr@bkrlegal.com 1901 Avenue of the Stars, Suite 370 Los Angeles, CA 90067 (310) 557-0062 Attorneys for the Flexopack Defendants</p>
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SO ORDERED:

UNITED STATES DISTRICT JUDGE